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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,045	07/23/2001	Robin S. Gray		3733

7590 10/24/2003  
ROBIN S. GRAY  
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EXAMINER
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BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/911,045

Applicant(s)

GRAY, ROBIN S.

Examiner

N. Bhat

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 2-6 and 15-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in the aforementioned claims what applicant means wherein the food condiment slice has a woven form, face-fused form, side-fused form, chopped form side-fused-face-fused form. It is unclear whether the condiment slice comprises a condiment which is sandwiched between edible films which have these different forms or whether the condiment slice has this form resulting from the molding, shaping or cutting of the condiment slice, i.e., the woven form is by using a serrated cutting tool or die having a wavy knife or that the slice is stamped or embossed with a wave or grid. The concept of sandwiching is not described in the claims or how the condiment slice is made and it is unclear what applicant means about side fusing or face fusing or side-fused-face fused form. Suitable explanation and correction is required. Applicant should recite what is meant by woven form, side fused or face fused when describing the condiment slice.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,7-13 and 14 rejected under 35 U.S.C. 102(b) as being anticipated by

Durst.

Durst teaches a solid food condiment slice which is resistant to physical, chemical and bacteriological degradation. The solid condiment piece consists essentially of a matrix of hydrophilic film forming agents, water, edible humectants and at least one edible condiment. The condiments which can be prepared as a solid condiment slice include tomato catsup, tomato chili sauce, cranberry-orange relish, extracts, and condiments which include peppermint, anise, bay leave extract, leek, mustard, horseradish, beef extracts, cloves, cinnamon, cinnamon root, basil, pimento, orange leaves, coriander, lime, also flavorings which can be added to the matrix includes acetaldehyde, acetic acid, allyl disulfide, etc. The amount of condiment and type incorporated into the matrix will depend largely upon the desired condiment product and the flavor potency of the condiment. The condiments are uniformly distributed through the matrix in a manner such that it cannot be identified by macroscopic examination. Other ingredients included in the matrix include preservatives, antioxidants, firming agents, flavoring surface-active agents and cooling agents.[Note the abstract, Column 1, lines 6-75 and Column 2, lines 20-72] Durst shows by example a catsup food sheet, onion food sheet, mustard food sheet and apple butter food sheet. The food sheets as claimed by Durst fully anticipate applicant's claims. With respect to applicant's recitation that the condiment slice is used as a beverage slice does not impart patentability to the claims because the intended would not remove Durst's condiment slice as an anticipatory reference.

Claims 1,7-13 and 14 rejected under 35 U.S.C. 102(b) as being anticipated by Mayfield U.S. Patent 5,853,778.

Mayfield teaches an edible material thin film applied to a sticky or moist food products, the edible material can be sprayed on the moist food to provide a solid slice of amorphous food. Specifically, a slice of peanut butter and jelly or a slice of chicken salad is described. The amorphous food product is placed on a sheet or film of edible material, the sheet is then wrapped over the food product. The product then essentially has an outer shell made from a thin edible film. The edible film is made by mixing a gelling substance such as gelatin, pectin or agar with water and then gelling the solution, which then made into a film or sheet. [Note Column 4, lines 42-66] The edible condiment slices are made to provide an individual sandwich size of condiments such as a slice of peanut butter and jelly or preserves or jam. [Note Column 5, lines 21-63] The peanut butter and jelly slice claimed and described by Mayfield anticipates applicant's claims as presently drafted. With respect to applicant's recitation that the condiment slice is used as a beverage slice does not impart patentability to the claims because the intended would not remove Mayfield's composition or article as an anticipatory reference.

Claims 1,7-13 and 14 rejected under 35 U.S.C. 102(b) as being anticipated by Bogdan U.S. Patent 5,567,454.

Bogdan teaches nut butter and jelly food slices which includes a first layer of jelly and a second layer of jelly disposed in contacting relationship with the first layer of jelly. A volume of nut butter is encapsulated between the first and second layers of jelly. Bogdan teaches providing a pre-formed food slice comprising at least one preformed layer of jelly dimension to fit on a food substrate, which include bread and crackers.

Art Unit: 1761

The food slice can be any shape, including round, oval square, symmetrical and asymmetrical shapes and can take on the shape of any comic character and can be best made to fit on a slice of bread about 3.5" wide by 4.0" long and is about 1/8 to 1/4" thick. The slice of peanut butter and jelly as described fully anticipates applicant's claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-6 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durst or Mayfield or Bogdan.

As stated above, Durst, Mayfield and Bogdan singularly teach applicant's invention substantially as claimed. Each of these references teach providing a condiment slice having a top, surface and bottom surface comprising at least one condiment or or beverage condiment which include flavors which both for use in a beverage or a sandwich. Each of these references teaches that the condiment slice is

Art Unit: 1761

sized and shaped to be used in making sandwiches. Specifically, Durst teaches at Column 3, line 27 that the condiments of the present invention can be provided in various sizes and shapes such as cubes, sheets, bars, rods, etc. The condiment slices are of unitary construction. Mayfield '778 teach that the edible amorphous food is encased or enveloped by an edible film which is specifically sized and shaped to be used on a sandwich and can be individually wrapped into individual slices which can then be further packaged and used as an as needed bases. Bogdan teaches that the nut butter and jelly slice can be used on crackers, bread, and ovals and specifically preferred to be sized to be used in conjunction with bread in making sandwiches. The jelly and nut slice can be individually wrapped in flexible coverings and then packaged in a single food container.

To provide the condiment slice having a woven form, face fused form, side-fused would have been obvious to one having ordinary skill in the art from the singular teachings of Durst, Mayfield or Bogdan, and to provide the condiment slice having applicant's preferred forms since shape, size and form has been taught in all the references as not being critical and different sizes, sizes, shapes and configurations have been contemplated thus rendering applicant's invention as a whole obvious to one having ordinary skill in the art at the time the invention was made.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Alden et al. teach a pizza sauce disk comprising a pizza sauce, which includes a heat reversible gelling agents. Bogdan '939 teach a method and apparatus for making nut butter and jelly food slices. Mayfield teach food products

utilizing edible films and methods of making and packaging. Mayfield'692 teach food product utilizing edible films and its method of making. RE37,275 is the reissued application of the Bogdan reference used in the rejections. Stewart teaches a method and edible film for decorating food. Bienvenu teaches a gelled seasoning sheet which is used in cooking and seasoning foods. WO 02/01972 teaches a food slice consisting of two or more food items.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat  
Primary Examiner  
Art Unit 1761